

HON. RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	NO. CR08-5407RBL
)	
v.)	DEFENDANT'S SENTENCING
)	MEMORANDUM
JENNIFER L. CARINO,)	
)	
Defendant.)	

I.

INTRODUCTION

On December 18, 2008, Jennifer L. Carino appeared before Hon. Ronald B. Leighton and entered a plea of guilty to a superseding information charging her with making a materially false statement on her federal income tax return for the 2005 calendar year, in violation of 26 U.S.C. §7206(1). The charge was based on Ms. Carino's failure to report on her income tax return monies she received for participating in the cashing of checks payable to her, drawn on Mahnke Lumber Company, in payment for logs that had not been delivered to the lumber company. Sentencing is now scheduled to occur on **April 17, 2009, at 11:00 a.m.** In this memorandum, we present our sentencing recommendation and discuss the factors that support it.

DEFENDANT'S SENTENCING
MEMORANDUM - 1

Law Offices of Allen R. Bentley
1111 Third Avenue, Suite 2220
Seattle, WA 98101-3207
(206) 343-9391

II.**SENTENCING RECOMMENDATION**

We recommend that the court place Ms. Carino on probation for five years, with the special condition that she spend the first six months in home confinement with electronic monitoring.

III.**DISCUSSION**

Our recommendation is well warranted by the facts of this particular case. Moreover, a probationary sentence, combined with a period of home confinement, would be consistent with the sentences imposed on a number of the other defendants in this case, defendants whose culpability is somewhat comparable to that of Ms. Carino – Robert M. Lester, Anthony Barbera, Daniel McCormick, Shawn Pak, Monica Ramos, Jason Staley, David Vinson, Helen Ware, Courtney Wemmer and, most recently, Elaine Turner.

A sentence to probation with home confinement would also be consistent with the advisory Sentencing Guidelines. The Probation Office has calculated the guidelines in the following manner:

Base Offense Level [Guidelines §§2T1.1(a)(1) and 2T4.1(C)]	10
Specific Offense Characteristic for Failing to Report Income of More than \$10,000 in a Single Year [Guidelines §2T1.1(b)(1)]	+ 2
Less Adjustment for Acceptance of Responsibility [Guidelines §3E1.1]	- 2
Total Offense Level	10

We agree with the Probation Office's calculation of the Guidelines. We also agree that Ms. Carino falls into Criminal History Category I and faces a range of six to 12 months.

1 The “low end” of the calculated guidelines range is six months. The case falls within Zone B. In
2 Zone B, the low end of the range can be satisfied by a sentence that substitutes home confinement for
3 incarceration in a jail-type institution on a day-for-day basis. *See* Guidelines §5C1.1(c)(3).¹

4 Ms. Carino’s involvement in the scheme to defraud the Mahnke Lumber Company was as a
5 cashier of checks issued by the company in payment for non-existent logs. Ms. Carino became involved
6 at the urging of her then boyfriend, Berlie Fincham. Fincham lied to her about where the Mahnke
7 Lumber checks were coming from – he told her that the checks had been issued in payment for lumber
8 that had been “donated.” He clearly felt that a cover story of some kind was needed in order to induce
9 her to cash the checks. Fincham felt that it would be easier to get her to cash them by misrepresenting
10 the surrounding circumstances. Of course, she was not entitled to the checks under any set of facts. As
11 Ms. Carino stated in her statement accepting responsibility, what Fincham told her

12 did not justify what I had done. I was at a vulnerable point in my life and the temptation of ‘easy
13 money’ led me to make a bad decision. I regret my involvement with this and wish I could take
it back.

14 Ms. Carino, 25 years old, is the product of a chaotic, unsupportive family system. Somehow she
15 has managed to overcome the handicaps of her upbringing and become a relatively responsible
16 individual. She has a Washington real estate license. She owns two rental homes. At one point she was
17 entrusted with legal custody of a younger sibling. During the time when she was in a relationship with
18 Mr. Fincham, she did not cohabit with him, because she felt it would not be a good setting for her young
19 daughter, Marissa.

20
21
22 1. The Probation Office recommends that Ms. Carino be sentenced to 30 days
23 incarceration, to be followed by one year of supervised release, with the special condition of
24 home confinement with electronic monitoring to follow the 30 days. Our recommendation is
similar, but without the 30 days and with four more years of court supervision.

1 After the episode with Mr. Fincham, Ms. Carino returned to living with her fiancé, Chris Carino.
2 Mr. Carino is gainfully employed as a warehouse worker and appears to be a further source of stability
3 for her at this time.

4 Ms. Carino's conduct while awaiting sentencing not been perfect – witness her arrest for driving
5 while intoxicated. Yet to the extent that she has experienced problems adjusting to pretrial supervision,
6 this underscores the appropriateness of a sentence that will insure a relatively long period of court
7 supervision.²

8 III.

9 CONCLUSION

10 Ms. Carino has taken responsibility for her actions and is prepared, obviously, to serve whatever
11 sentence the court may impose – be it incarceration, home confinement, or some of both. In deciding on
12 what sentence would be appropriate, we submit that the court should consider how the sentence will
13 impact the length of time under which Ms. Carino will be subject to court supervision. If she is
14 sentenced to incarceration, as recommended by the Probation Office, the maximum length of court
15

16 2. We differ with the statement of the Probation Office, in its "Justification" section, to
17 the effect that Ms. Carino has twice traveled out of state without the prior approval of Pretrial
18 Services. Ms. Carino's bond [Docket No. 29] limits her to travel within the continental United
19 States or as directed by Pretrial Services. As we read it, and as Ms. Carino understood it, travel
20 within the continental United States did not require prior Pretrial Services approval. Instead, as
21 part of being supervised she was simply to keep Pretrial Services informed of her travel. She
22 disclosed her first California trip (where she was the bridesmaid at her mother's wedding) to
23 defense counsel, and if counsel had believed that her travel was limited to this district he would
24 have filed a motion to permit the travel. We have received emails between Ms. Carino and her
25 Pretrial Services officer which reflect this understanding and in which she advised the officer of
26 the second of the out-of-state trips, a brief trip to California for a family reunion, arranged by her
grandfather. These emails will be submitted to the court upon request.

1 supervision under the law would be one year, as the Probation Office recognizes. However, if the court
2 should decide that a probationary sentence is warranted, the court will be able to maintain supervision
3 for a period of five years.

4 Ms. Carino is a young person who could benefit from the supervision of a probation officer and
5 from the resources of the federal courts. A five-year probationary sentence would be appropriate for that
6 reason. Moreover, the court's sentence will impose a significant amount of restitution, \$123,562. While
7 on probation, Ms. Carino will have the added incentive of probationary supervision to make payments to
8 Mahnke Lumber Company for the loss they suffered in this case.

9 For the foregoing reasons, we submit, a probationary sentence will serve the best interests of the
10 defendant, the community, and the victim, in this case.

11 DATED this 13st day of April, 2009.

12 Respectfully submitted,

13 LAW OFFICES OF
14 ALLEN R. BENTLEY

15 By: /s/ Allen R. Bentley
16 ALLEN R. BENTLEY
17 WSBA No. 12275
18 Law Offices of Allen R. Bentley
19 1111 Third Avenue
20 Seattle, WA 98101
21 Telephone: (206) 343-9391
22 Fax: (206) 682-3746
23 Email: abentley@concentric.net

CERTIFICATE OF SERVICE

I certify that on April 13, 2009, I electronically filed the foregoing Defendant's Sentencing Memorandum with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the United States of America, Assistant United States Attorney Arlen Storm, and to counsel for the codefendants, at their email addresses of record.

By: /s/ Allen R. Bentley

ALLEN R. BENTLEY

WSBA No. 12275

Law Offices of Allen R. Bentley

1111 Third Avenue

Seattle, WA 98101

Telephone: (206) 343-9391

Fax: (206) 682-3746

Email: abentley@concentric.net

DEFENDANT'S SENTENCING
MEMORANDUM - 6

Law Offices of Allen R. Bentley
1111 Third Avenue, Suite 2220
Seattle, WA 98101-3207
(206) 343-9391